

EXHIBIT D

Wilson, Andrew

From: Swenson, Jon
Sent: Wednesday, March 4, 2020 9:37 PM
To: Vanderporten, Steven L.
Cc: Guy, Hop; Smith, Karina; Wilson, Andrew; jpfieweger@michaelbest.com; agollwitzer@michaelbest.com; crparker@michaelbest.com; Ives, Erik J.; Koropp, David E.
Subject: RE: Ubiquiti's Responses to Defendants' Discovery [IWOV-iManage.FID278983]

Steven,

Ubiquiti is improperly preventing Defendants from accessing any of Ubiquiti's source code made available for inspection and have violated the order on the production of information as a part of the MIDP process. Defendants have been asking for Ubiquiti to disclose the basis of their claims in this case for over a year and a half. We intend to promptly bring these issues to the Court's attention if Ubiquiti does not immediately make its Source Code Available and withdraw its objections to Defendants' consultants.

Ubiquiti Has Improperly Refused to Make its Source Code Available

Defendants provided notice that they intended to inspect Ubiquiti's Source code nearly a month ago on February 6, 2020:

Pursuant to Paragraph 13(b) of the Agreed Confidentiality Order, Defendants hereby provide notice that they intend to inspect any Source Code made available by Plaintiff beginning on February 18, 2020 and continuing daily thereafter. One or more of Defendants' counsel of record and/or Defendants retained experts will conduct the inspection.

Defendants renewed this notice again on February 27 2020 and reiterated that they intended to inspect the source code "on the same day it is provided." Yet, Ubiquiti has not made its code available for inspection. Even assuming that Ubiquiti's objections to two of Defendants consultants were valid, Ubiquiti still must make its code available for inspection according to the terms of the Protective Order. Further, Ubiquiti failed to provide notice as required by the Protective Order as to where its code was available for inspection on March 3 as required by the Court's order.

Ubiquiti's Objections are Untimely and Unwarranted

Mr. Baer already signed the required certifications required under the Protective Order. Those were disclosed to Ubiquiti on February 11. There is no requirement that Mr. Baer provide the additional certifications you require. Moreover, your time to object to Mr. Baer on this basis has expired. Similarly, Ubiquiti now raises additional new issues with Mr. Baer regarding his work with Arista. But that work was disclosed to Ubiquiti back on February 11 and Ubiquiti did not timely object. Please immediately withdraw any remaining objection to Mr. Baer.

Regarding Dr. Hashmi, Ubiquiti complains that his disclosure was incomplete because it was not disclosed that he operates his own consulting firm "Bitwise Forensic Research, Inc." Yet Defendants specifically disclosed Dr. Hashmi's work for Bitwise Forensics Research in the disclosure email sent on February 27, 2020. Your remaining unspecific complaints about apparent differences in the content of disclosures for Dr. Hashmi from other matters are immaterial. Dr. Hashmi's disclosures properly contain the information required by the Protective Order in this case. Please immediately withdraw any remaining objection to Dr. Hashmi.

Thanks,

Jon

Jon V. Swenson

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From: Vanderporten, Steven L. <svanderporten@foxswibel.com>

Sent: Wednesday, March 4, 2020 8:51 AM

To: Swenson, Jon <jon.swenson@bakerbotts.com>

Cc: Guy, Hop <hop.guy@BakerBotts.com>; Smith, Karina <karina.smith@bakerbotts.com>; Wilson, Andrew <andrew.wilson@BakerBotts.com>; jpfieweger@michaelbest.com; agollwitzer@michaelbest.com; crparker@michaelbest.com; Ives, Erik J. <eives@foxswibel.com>; Koropp, David E. <dkoropp@foxswibel.com>

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[EXTERNAL EMAIL]

Jon,

We will make the source code available pursuant to the Agreed Confidentiality Order (the “Protective Order”) at Fox Swibel’s offices, 200 West Madison Street, Suite 3000, Chicago, IL 60606, once you fulfill your obligations to complete the disclosures for the consultants that you intend to have inspect the code. To date, Cambium’s disclosures of Nikolaus Baer and Atif Hashmi are incomplete and do not provide the information necessary for us to make a determination under the Protective Order as to whether or not disclosure of source code to them threatens to harm our clients. As detailed below, some of the deficiencies only became clear after our own investigation; we remind you that it is your obligation to comply with the notice requirements of Paragraph 11 of the Protective Order.

Mr. Baer’s supplemental disclosure served February 27, 2020 remains incomplete under the Agreed Confidentiality Order (the “Protective Order”), including under Paragraph 11 (d), (f) and (g). Please supplement his disclosure and request that Mr. Baer execute the required Acknowledgement and Agreement to be Bound (the “Acknowledgement”) and Certification of Consultant Re Confidentiality Order Governing Source Code in this Case (the “Certification”) on behalf of both Zeidman Consulting and Baer Consulting.

We also have concerns about Mr. Baer’s present consulting relationship with Arista Networks, Inc., which acquired a competitor of Ubiquiti in 2018. Please advise as to the nature and circumstances surrounding Mr. Baer’s consulting relationship with Arista, including (i) a description of Mr. Baer’s role and consulting activities in the *Optumsoft, Inc. v. Arista Networks, Inc.* litigation pending in California (Case 1-14-CV-263257) (the “*Optumsoft* Litigation”), including whether Mr. Baer reviewed source code as part of his retention in that case; (ii) a description of factual and legal issues in the *Optumsoft* Litigation; (iii) a description of the products, programs or software involved in the *Optumsoft* Litigation sufficient for us to determine whether they compete with any of Ubiquiti’s products or services, and; (iv) identify whether Mr. Baer consults on any other issues for Arista Networks outside the context of the *Optumsoft* Litigation, including on the development of software, programs or products for Arista or any of its corporate affiliates or business units. Please be advised that we are continuing to evaluate whether good cause exists to object to Mr. Baer’s review of Ubiquiti’s source code based on his ongoing consulting relationship with a Ubiquiti competitor. We reserve our right to object to Mr. Baer’s participation in this case consistent with the deadlines set forth in the Protective Order.

Dr. Hashmi’s disclosure is also incomplete. Just as with Mr. Baer, our own investigation revealed omissions in Dr. Hashmi’s disclosure. We discovered that he operates his own consulting firm, Bitwise Forensic Research, Inc., which was omitted from his resume sent on February 27th. We also located resumes for Dr. Hashmi, submitted in other cases, that disclose litigation consulting work that was not disclosed in the materials you provided. There are also discrepancies pertaining to Dr. Hashmi’s work history in the resume we received from Defendants and what was submitted in other cases (including, for example, that Dr. Hashmi did not disclose his consulting work for Zeidman in other matters). Dr. Hashmi also executed the Acknowledgement and Certification in a manner that is confusing, inconsistent and incomplete. We request that update your disclosure for Dr. Hashmi to include the information required by the Protective Order. Please also explain which consulting firm(s) Mr. Hashmi will be working for in connection with this case.

As your disclosures of Mr. Baer and Dr. Hashmi to date are incomplete, your updated disclosures will determine the date(s) by which we have to object to either consultant's participation in this case. PO at ¶ 12 ("the Producing Party shall have five (5) business days, starting from the first business day following the date upon which Receiving Party provides the notice and all information required by paragraph 11 . . .").

Best,

Steven Vanderporten

Steven L. Vanderporten

svanderporten@foxswibel.com | 312-224-1218 (direct)

FOX SWIBEL

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From: jon.swenson@bakerbotts.com [mailto:jon.swenson@bakerbotts.com]

Sent: Tuesday, March 03, 2020 10:56 PM

To: Vanderporten, Steven L.

Cc: hop.guy@BakerBotts.com; karina.smith@bakerbotts.com; andrew.wilson@BakerBotts.com; jpfeweger@michaelbest.com; agollwitzer@michaelbest.com; crparker@michaelbest.com; Ives, Erik J.; Koropp, David E.

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Steven:

Ubiquiti's discovery responses state that it will produce source code for inspection. The deadline to provide that code for inspection is today but we have not received any notice that it has been made available for inspection, including where it can be inspected.

Please provide us that information today so that we can inspect it according to our previously provided notice.

Thanks,

Jon

Jon V. Swenson
O: 650-739-7514
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On Mar 3, 2020, at 6:38 PM, Vanderporten, Steven L. <svanderporten@foxswibel.com> wrote:

[EXTERNAL EMAIL]

Counsel,

Attached please find Ubiquiti's Answers to Defendants' First Set of Interrogatories and Ubiquiti's Responses to Defendants' First Set of Requests to Produce.

Best,

Steven Vanderporten

Steven L. Vanderporten
svanderporten@foxswibel.com | 312-224-1218 (direct)

<image001.png>

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<Ubiquiti's Responses to Defendants' First Set of Requests to Produce.pdf>
<Ubiquiti's Answers to Defendants' First Set of Interrogatories.pdf>

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